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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,251	08/28/2001	Dwip N. Banerjee	AUS920010507US1	5907

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EXAMINER
DUFFY, DAVID W

ART UNIT	PAPER NUMBER
3714	

NOTIFICATION DATE	DELIVERY MODE
06/20/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptonotifs@yeeiplaw.com

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>23 April 2008</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7,12,13,15,21,22 and 51* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5, 7, 12-13, 15, 21-22, and 51* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Status of Claims

1.　　This office action is in response to the amendment filed 04/23/2008 in which

applicant amends claims 1, 7, 12-13, 15, 21-22 and 51 and cancels claims 6, 8, 14, 16-

18, 23-33, 35-41, and 44-50.　Claims 1-5, 7, 12-13, 15, 21-22, and 51 are pending.

Continued Examination Under 37 CFR 1.114

2.　　A request for continued examination under 37 CFR 1.114 was filed in this

application after appeal to the Board of Patent Appeals and Interferences, but prior to a

decision on the appeal.　Since this application is eligible for continued examination

under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the

appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this

application has been reopened pursuant to 37 CFR 1.114.　Applicant's submission filed

on 04/23/2008 has been entered.

Claim Rejections - 35 USC § 103

3.　　The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

4.　　Claims 1-3, 12, and 21-22 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Thomas (US 5885087) in view of Sugimoto (US 6755661).

5.　　In regards to claims 1, 3, Thomas discloses a test timing system that discloses a

computerized testing device that conducts testing for a user whereby a question is

presented to the user and the time taken by the user to answer the question is tracked,

displayed, and compared to a predetermined time (2:5-20 and 4:45-65).　Thomas

further discloses that the system may be used to practice examination skills and improve test taking skills (3:4-14) and that the system maintains player profiles in order to provide a history of the user's progress including performance by subject or topic (7:43-58). Thomas lacks explicitly disclosing that the alert schedule is based on the profile of the user's previous performance, the relative question difficulty, and alert thresholds and that presentation of test questions are based on levels of difficulty of the test questions and the ability of the test taker.

6.   In related prior art, Sugimoto discloses a testing system that adapts the timing of a test question when a user takes less than an allotted time on a question and provides the extra time on a later question for the user (abstract and 18:48-54). Sugimoto further discloses that profiles of the test taker are maintained, including skill level of the user (9:5-7 and fig 9, user ID and skill code), and the profile is used to determine questions presented to the test taker (917-20), a question database that includes information on the question difficulty to be related to the user's skill setting (6:5-7) and a preset time limit for each question (6:63-40), which examiner contends is analogous to an alert threshold, that is changed by the system as the user's skill is determined. One skilled in the art would recognize the advantages of providing more time on questions a user has trouble with and less time on questions the user finds easy in order to complete an exam in the allotted time with the most correct answers possible thus improving the test taker's performance and tailoring a test to a user's ability in order to help them improve incrementally.

7.   Therefore it would have been obvious to one skilled in the art at the time to have modified Thomas in view of Sugimoto to include the adaptive timing system in order to further aid the test taker in completing the test in the allotted time while giving as much time as necessary to correctly answer questions and customize the tests presented to the user's ability.

8.   The combination of Thomas and Sugimoto does not explicitly disclose that a user alert is generated after the question timing data exceeds an alert threshold. Rather, Thomas discloses a constant display of a predetermined time and the elapsed time taken for the question that is periodically updated (4:45-65). However, at the time of the invention it would have been an obvious matter of design choice, well within the abilities of one skilled in the art to have used an alert after the time or the constant display of Thomas as each produces the expected result of apprising the test taker of the time constraints for the test question. Accordingly, such a modification fails to distinguish over the prior art. Furthermore, it would have been obvious to one or ordinary skill in the art to include an indication of the total time remaining for the test when the system is used for an actual test as the system of Thomas is intended to prepare a user to take a test within a set amount of time.

9.   In regards to claim 2, Thomas discloses the system is a computer program on a computer (3:53-65).

10.   In regards to claim 12, Thomas discloses that the score for the test questions is stored in permanent storage (6:38-41 and Table 1).

11.   In regards to claims 21 and 22, Thomas discloses the storage of responses to test questions by the test taker and the question timing data for each question (6:37-60), but does not explicitly the use of the stored data to update the customized alert profile for use in future tests.

12.   In related prior art, Sugimoto discloses a testing system that adapts the timing of a test question when a user takes less than an allotted time on a question and provides the extra time on a later question for the user (abstract and 18:48-54). Sugimoto further discloses that profiles of the test taker are maintained, including skill level of the user (9:5-7 and fig 9, user ID and skill code), and the profile is used to determine questions presented to the test taker (917-20), a question database that includes information on the question difficulty to be related to the user's skill setting (6:5-7) and a preset time limit for each question (6:63-40), which examiner contends is analogous to an alert threshold, that is changed by the system as the user's skill is determined. One skilled in the art would recognize the advantages of providing more time on questions a user has trouble with and less time on questions the user finds easy in order to complete an exam in the allotted time with the most correct answers possible thus improving the test taker's performance and tailoring a test to a user's ability in order to help them improve incrementally.

13.   Therefore it would have been obvious to one skilled in the art at the time of the invention to have modified Thomas in view of Sugimoto to have used to the test question and timing history in order to aid the test taker on future tests in order to help the test taker improve their performance.

14.   Claims 4-5, 7, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable
over Thomas (US 5885087) in view of Sugimoto (US 6755661) as applied to the claims
above and further in view of admitted prior art.

15.   In regards to claims 4, 5, and 7, the billing for services rendered is regarded as
old and well known in the art in view of the admitted prior art.

16.   In regards to claims 13, that test creators may be different entities than test
administrators is regarded as old and well known in the art in view of the admitted prior
art.

17.   Claim 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas
(US 5885087) in view of Sugimoto (US 6755661) as applied to the claims above, and
further in view of Kershaw; Roger C. et al. (US 5827070 A).

18.   In regards to claim 15, Thomas discloses the system as set forth above, but does
not explicitly disclose a session identification established for the presentation of the test
questions by a proctor device, including a device identifier and wherein outputting test
question timing data to the proctor device is based on the proctor device identifier.

19.   In related prior art, Kershaw discloses a test creation and administration system
that discloses the collection of statistical data on all examinees taking a certain test (2:8-
16) as well as the recording of a test program id, registration id, test center id, and
workstation id for each test taker in order to provide an audit trail (73:27-74:26). One
skilled in the art would recognize the advantage of maintaining detailed records on test
takers to provide accurate records to ensure that no cheating or errors occurred.

20.   Therefore it would have been obvious to one skilled in the art at the time of the

invention to have modified Thomas in view of Sugimoto further in view of Kershaw to

have included session identification and proctor identification to maintain accurate and

detailed records of the test administration. The combination made does not explicitly

disclose that the test question timing data is output to the proctor device based on the

proctor device identifier. However, it would have been obvious to base the sending of

timing data on proctor id as testing centers commonly provide multiple tests

simultaneously and the individual proctors would only need the timing data for the tests

they are monitoring thus reducing the data traffic overhead.

21.   Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kershaw

in view of Thomas (US 5885087), Hoehn-Saric (US 5915973) and Sugimoto (US

6755661).

22.   Kershaw discloses a test administration system that records statistical data about

test takers and identification system about each test taker (2:8-16 and 4:3-5:2). Data

recorded includes session identification, test identification with several tests listed

suggesting the capability for multiple tests to be presented by the system (73:35-74:27).

While Kershaw does track test results for the creation of performance statistics, it lacks

in explicitly stating the tracking of question timing data or instant messaging.

23.   In analogous testing system, Thomas discloses the tracking of question timing

data and the comparison to predetermined time data (2:5-20 and 4:45-65). One skilled

in the art would recognize the advantage of including time data in the statistics gathered

by Kershaw in order to more accurately determine overall difficulty of a question as well

as the notification feature in order to provide to the test takers time indication as standardized tests are time limited and keeping track of user's time is very important (4:49-51).

24.   In an analogous test administration system, Hoehn-Saric discloses that the administrator of a test has great flexibility in sending and receiving messages associated with the administration of a test including data based communications (3:64-4:3, 5:19-40, 7:7-13, 7:23-27, 9:18-24, and 10:42-48). This flexibility may include sending and responding to messages with the test product users as quickly as the physical interconnection is capable of processing and sending them, making them "instant messages".

25.   All of the component parts are known in Kershaw, Thomas and Hoehn-Saric. The only difference is the combination of the "old elements" into a single system by including the component parts in a single administrative system.

26.   Thus it would have been obvious to one having ordinary skill in the art to include the instant messaging taught by Hoehn-Saric and the test question timing of Thomas with the test administration system of Kershaw, since the operation of the instant messaging and the question timing is not dependant on the operation of the test administration system and the other components could be used in combination with a test administration system to achieve the predictable results of a test administration system with test timing and instant messaging.

27.   The combination made lacks explicitly disclosing that the alert schedule is based on the profile of the user's previous performance, the relative question difficulty, and

alert thresholds and that presentation of test questions is based on levels of difficulty of the test questions and the ability of the test taker.

28.   In related prior art, Sugimoto discloses a testing system that adapts the timing of a test question when a user takes less than an allotted time on a question and provides the extra time on a later question for the user (abstract and 18:48-54). Sugimoto further discloses that profiles of the test taker are maintained, including skill level of the user (9:5-7 and fig 9, user ID and skill code), and the profile is used to determine questions presented to the test taker (917-20), a question database that includes information on the question difficulty to be related to the user's skill setting (6:5-7) and a preset time limit for each question (6:63-40), which examiner contends is analogous to an alert threshold, that is changed by the system as the user's skill is determined. One skilled in the art would recognize the advantages of providing more time on questions a user has trouble with and less time on questions the user finds easy in order to complete an exam in the allotted time with the most correct answers possible thus improving the test taker's performance and tailoring a test to a user's ability in order to help them improve incrementally.

29.   Therefore it would have been obvious to one skilled in the art at the time to have modified Thomas in view of Sugimoto to include the adaptive timing system in order to further aid the test taker in completing the test in the allotted time while giving as much time as necessary to correctly answer questions and customize the tests presented to the user's ability.

30.   The combination made does not explicitly disclose that a user alert is generated

after the question timing data exceeds an alert threshold. Rather, Thomas discloses a

constant display of a predetermined time and the elapsed time taken for the question

that is periodically updated (4:45-65). However, at the time of the invention it would

have been an obvious matter of design choice, well within the abilities of one skilled in

the art to have used an alert after the time or the constant display of Thomas as each

produces the expected result of apprising the test taker of the time constraints for the

test question. Accordingly, such a modification fails to distinguish over the prior art.

Furthermore, it would have been obvious to one or ordinary skill in the art to include an

indication of the total time remaining for the test when the system is used for an actual

test as the system of Thomas is intended to prepare a user to take a test within a set

amount of time.

Response to Arguments

31.   Applicant's arguments with respect to the claims have been considered but are

moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to DAVID W. DUFFY whose telephone number is

(571)272-1574. The examiner can normally be reached on M-F 0830-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Xuan M. Thai can be reached on (571) 272-7147. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

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/D. W. D./
Examiner, Art Unit 3714

/Corbett Coburn/
Primary Examiner
AU 3714